

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3045 of 1985

Date of decision: 24-12-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FULSING BABABHAI SOLANKI

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR HK RATHOD for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/12/96

ORAL JUDGEMENT

The petitioner, a driver of the Gujarat State Road Transport Corporation, has filed this petition challenging the order dated 10th May, 1985 under which he was ordered to be dismissed from service. From the writ petition it is clear that the order of dismissal from service has been made after serving charge sheet and holding departmental inquiry against the petitioner.

2. This writ petition was admitted on 14th May, 1985 and interim relief in terms of para 15(B) was also granted. In para 15 (B) the petitioner prayed for restraining the respondents from implementing the dismissal order dated 10th May, 1985. It is really shocking that the order impugned in this special civil application has not been filed by the petitioner. It is not clear how the petitioner has prepared the writ petition challenging the legality and validity of the order impugned in the petition without seeing the order. The very fact that the petitioner has challenged the legality and validity of the order on many grounds goes to show that he was aware of the contents of the order, but he deliberately avoided production of the order in the Court. The intention is very obvious - to get interim relief from this court.

3. In para 6 of the petition the petitioner stated that the dismissal order was passed on 10th May, 1985 but it has not been communicated to him till the date of filing of the petition, and in the next breath he has stated that the said dismissal order against the petitioner is bad in law and against the principles of natural justice. I fail to appreciate the hot haste with which the petitioner has approached this court, without waiting for receipt of the order of dismissal. It is not the case of apprehended action, but a concluded action. The petitioner was given charge sheet, inquiry was held and after giving show cause notice the petitioner has been dismissed from service. In such cases, without first getting copy of the order, filing of writ petition before this Court does not stand to any logic. Moreover, in the case of *Surender Singh vs. Central Government*, reported in AIR 1986 SC 2166, the Supreme Court held that unless a copy of the impugned order is filed, the court cannot quash the same under Article 226 of the Constitution of India. Filing of the impugned order is necessary for the maintainability of the writ petition, without which writ of certiorari cannot be issued by this court sitting under Article 226 of the Constitution of India. However, in view of the fact that this writ petition has been admitted and the petitioner was protected by grant of interim relief and it is the

admitted case of the respondents that the order of dismissal was made against the petitioner, I do not consider it proper to dismiss the writ petition on this ground. However, the writ petition deserves to be dismissed on another ground.

4. The counsel for the petitioner admits that the order of dismissal of the petitioner from service is appealable. Thus the petitioner has an alternative remedy and failed to show any justification to approach this Court directly, without availing of the said remedy. In the case of punishment imposed after holding departmental inquiry, ordinarily direct writ petition should not be entertained by this court. The delinquent employee has sufficient correctional remedies by way of filing appeal or revision. It is not the case of the petitioner that the order is without jurisdiction. In such a case the Court should have insisted the litigant first to avail of the alternative remedy. Be that as it may. The order has not been communicated to the petitioner, as per his own case, and as such it is a fit case where the petitioner should be asked to first file appeal before the appellate authority. When this court has protected the petitioner for all these years I do not consider it proper to vacate the stay order at this stage.

5. In the result the writ petition stands disposed of with the direction to the respondents that the writ petition itself may be treated as appeal before the appellate authority. The petitioner shall send copy of the special civil application along with its annexures to the appellate authority within a period of two months from today. The Corporation shall produce the order of dismissal of the petitioner from service before the appellate authority. The appeal filed by the petitioner shall be disposed of within a period of three months from the date of filing thereof. Till the appeal filed by the petitioner is decided by the appellate authority the interim relief granted by this court shall continue to operate. The petition stands disposed of accordingly. Rule made absolute to the aforesaid extent, with no order as to costs.

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